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New Civil Hazards Agency Could Regulate Gun Sales

GUNS, booze, cigarettes, drugs, fast cars . . . Human ingenuity knows no bounds when it comes to inventing new pleasures and hazards. Regulating hazards without stifling the individual pursuit of happiness is a major challenge to the designers of democratic social techniques, especially difficult when the effort is muddled by conflicts, personal privilege, established economic interests, risks to uneducated users or innocent bystanders and controversy over the nature and importance of the hazards.

The criminal law is the historic tool, but a notoriously unwieldy one for the regulation of personal behavior and especially, ancient and customary vices. In other spheres, regulatory agencies have been endowed with a broad authority to achieve the purposes set by legislation. Congress does not have to pass a law to decide whether penicillin should be sold over the counter, to set telephone rates or to renew a broadcasting license. We should deal with the regulation of civil hazards, like firearms, in the same way.

The common-law doctrine of implied warranty already imposes certain limited responsibilities on manufacturers and sellers of hazardous implements like automobiles but the limits of this doctrine are clouded by the absence of specific statutes covering contemporary situations. Present law, for ex-

ample, gives very shaky ground to sue a gun dealer for damages inflicted by thugs armed with a weapon sold by the dealer. After all, a kitchen knife or a razor blade might also be instruments of grievous harm.

ONE SOLUTION MIGHT BE a Civil Hazards Agency with authority to judge which products are potentially so dangerous as to demand more careful control. If the Agency did find that domestic use of handguns was outweighed by their abuse in personal violence, it would not outlaw them. Instead, it would establish a chain of civil responsibility, back to the manufacturer, for specific abuses of the product.

In self-protection, the handgun manufacturer would have to insist on distributing the weapons through bonded dealers and, in turn, only to responsible individuals who can be held to account for the damages that the guns might inflict on others.

The law would not directly restrict the ownership of weapons except to ensure that each one is covered by the system. Purchasers would, in effect, have to buy an insurance policy together with the weapon and thus register themselves with the insurance company. Possession or transfer of a weapon would be a crime if it lacked a valid identifying mark, or if the new owner lacked a certificate of re-

sponsibility, either in his own name or derived from the dealer.

THE ADVANTAGES of this system are its flexibility and its pluralism. It is not very different from compulsory insurance and registration of Automobiles. Manufacturers and their insurers would be liable only to the extent that a jury found as a matter of fact that a specific weapon was an instrument of crime or civil injury. The insurance rates could then reflect the actual statistics of the abuse of a given class of weapons, and their owners. For example, the National Rifle Association might undertake to insure the weapons owned by its members.

How many more assassinations will we have to suffer before imposing reasonable social controls on the irresponsible sale of lethal toys?

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